U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: California Service Center Date: AUG 10 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established sustained international acclaim.

The petitioner is a film director and a native of [redacted] The director, in denying the petition, stated that the petitioner "is very well-known and successful in [redacted] however, it has not been demonstrated that she is among the best of the very best throughout the world." The director also stated that the petitioner has not shown "that she is a part of the small percentage who is recognized as being at the very top of her field of endeavor internationally." The director added:

> Further, it would be very difficult for a film director from [redacted] to achieve extraordinary alien status because [redacted] film industry is virtually non-existent. Such alien would be competing with directors from countries that are known for their exceptional film industries, such as the U.S., Canada, Australia, New Zealand, UK, France, Italy, Sweden, and Japan.

The director here misinterprets the statutory and regulatory language. The director, relying on the regulatory reference to "that small percentage who have risen to the very top of the field of endeavor," has concluded that a film director cannot rise to the top of that field in [redacted] because [redacted] film industry is overshadowed by those of other nations. The director thus regards the field of endeavor as being inherently international, and holds therefore that only internationally-known film directors have reached the top of the field.

While the director's reasoning is understandable, there is no statutory or regulatory support for the contention that "international" fields of endeavor require a higher standard of proof than "national" fields, nor is it clear how finely one could draw a distinction between the "national" and the "international." For instance, while film is indisputably "international," a given genre of film may be confined largely to a single nation or region (e.g. martial arts films in a handful of east Asian nations).

The underlying statute requires "sustained national or international acclaim." An alien who has reached the top of the field in a given country can, therefore, qualify for this

classification, provided the alien is able to meet the other statutory requirements. There is no support for placing a heavier burden on aliens in some occupations than in others. Furthermore, the reference to the "top of the field" occurs in the regulations but not in the statute, and therefore cannot supersede the statutory assertion that sustained national acclaim satisfies the terms of section 203(b)(1)(A)(i) of the Act.

There is no indication that the director attempted any full determination as to whether the petitioner enjoys national acclaim. This office will offer no such determination at this time, because the initial determination properly lies within the director's province.

The record contains a lengthy letter from counsel, enumerating and explaining the evidence of record. In reviewing this letter, the director should keep in mind that the assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Any material claim by counsel is without weight unless the evidence of record clearly supports that claim; a finding of eligibility must rest on the evidence itself rather than counsel's potentially subjective reading of that evidence. For example, counsel refers to the [redacted] Award as "the [redacted] equivalent of an Academy Award." Counsel's estimation of the award carries negligible weight unless counsel cites, and provides, persuasive evidence to support that claim.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.